

How is land under customary law managed?

Most land in Uganda is held under customary tenure. This is when the owners have no papers for their land, but they are still the legal owners of the land. The law of Uganda says that this kind of land must be run according to whatever rules people have always accepted locally. This means that land under customary tenure is still subject to customary law, as well as being recognised officially. Many people have not understood how the customary rules are supposed to work. Now that customary ownership of land and customary rules have been recognised by Parliament and the Government, it is important to understand this. This leaflet will try and make it clearer how customary administration of land is supposed to work. It is important that everyone understands this, especially the LCs, because the law of Uganda is that customary rules must be followed on customary land – except where the customary laws are against the Constitution or some other laws. Customary laws vary a little from place to place in Uganda, but most systems are based on the same principles. We believe that the following description is largely true for most customary legal systems in Uganda.

Owning and managing land

Some of the confusion about who ‘owns’ land under customary tenure is because the ownership and management of land are not organised in the same way as for freehold land. In freehold, the person (or people) who have their names on the title have the rights to use land as they wish, as long as the planning regulations of the authorities (e.g. the Town Council) are followed. They can choose whether or not they want to sell the land and to whom – though the Government does not allow them to sell land to someone who is not a citizen. The Government has set up a system for administering the land – the Land Boards, the Land Tribunals, the Land Registry. These offices do not own the land, but they are there to decide who owns land in case of disputes, and to make sure that everyone knows who owns which land.

In customary law, rights and responsibilities are not organised the same way. Owning land does not mean the same thing, because the rights and responsibilities are different. This does not mean that people are not ‘really’ the owners of their land. They do ‘really’ own their land, but ‘owning’ land means something slightly different. Some people have the responsibility for administering land. This is usually the clan elders. However, they also have the right to say who can sell land. That is because they have the responsibility to protect the land for all the clan. They also have the responsibility to make sure that everyone is given rights to land. This duty does not exist in the freehold system, because there are no responsibilities for freehold owners to provide others with access to land. It would be legal for one person to own all the (registered) land in the country, and for him or her to refuse to allow anyone else to farm. This cannot happen under customary law.

The family head usually manages the land on behalf of the family. He is the steward of the land. His rights to manage the land go together with the responsibility to look after the rights of others to use the land, and to make sure that the next generation will also be able to enjoy the land. Other people in the family also have rights to use the land. This is why it is not so easy to answer ‘who owns the land?’ The land really belongs to the family within the

clan, but the rights are shared out in a complex way. We try to make clear below who has which rights and responsibilities regarding the land.

Rights and Responsibilities

The Clan has responsibility for overseeing the administration of all the land. This means making sure that there are heirs appointed at household levels to manage the land and to oversee and authorise any land sales. The clan also owns land which is communally used, such as for hunting and grazing. It is responsible for ensuring proper use of the land and that there are no trespassers.

Head of Household.

A son became head of household at marriage. He is then allocated land to hold and to manage for the good of his family. He is the steward of that land. His wives, children and other family members also have rights to that land, but he is the overall 'manager'. He allocates land to his wife or wives. The head of household can also be a woman – e.g. a widow or a woman who had children without marrying (*see below*).

A widow.

A widow becomes a head of household on the death of her husband. She then has the responsibility to manage the land which had been allocated to her, and to allocate land to her male children when they become adult and get married. The elders or the clan would appoint an 'inheritor' to support her and protect her from trespassers. The widow did not pass on her land rights to the inheritor – the land passed from her to her children. The inheritor was managed by the clan and would be dismissed if he abused his office.

An heir.

In all cases the heir is a son and in most cases he is the eldest son who has shown signs of responsibility. (The origin of the mistaken idea that "*women do not own land*" is because the heir is always a man.) A son who does not demonstrate responsibility loses his rights as heir in favour of the next eldest son. When the head of the family dies, the clan installs an heir in a cultural ceremony. The head of the family would have allocated land to different people, but some would have remained for his personal use. The heir is responsible for managing this unallocated land, but not the land which had already been allocated.

Unmarried girls /Children born out of wedlock.

It was always presumed that a girl would eventually get married, so she would only be allocated land to use until she married and left the clan. On marriage her new clan would give her land to use. This has been misunderstood to give the idea that "*girls do not have rights to land*". Should a girl remain unmarried, the head of the family would allocate land for her. If she has children without being married, she is the head of this family, and has the responsibility to manage and be steward for the land allocated to her family – the same responsibility which a married son has for his family.

Divorced women.

Under customs, divorces are not expected. If a woman does divorce, she is expected to return to the brother who used the dowry which had been paid for her as payment for his

marriage. He is expected to share his land with the sister. If the heir still has unallocated land, then the divorced woman is allocated land and becomes head of family. Her children may have rights to use the land but can never be given land to manage as heads of their family. They are expected to return to their father's land.

Reverting land to the family 'pool'.

The amount of land one has rights to use depends on one's position in the family; the availability of land and one's ability to cultivate the land. There would be people who would have claims to land in the event that land could not be used or inherited. If a family does not have children and cannot use all their land, it would be used by the relative with the next claim to the land. If a man dies without a child to inherit the land, his land would be inherited by his brothers.

Dual Roles of institutions as managers of land and owners.

We have seen that owning land had both responsibilities (to be the steward of the land in the interests of the family) and rights, to use the land and make decisions about allocation. Over time, the relationship between the dual roles of being steward and having rights to the land have changed. Being a rights-holder has become a claim to be the owner of the land, overshadowing the role as steward of the land. In some cases, it is the very person who is supposed to be the steward, to protect the land and the people, who then takes over their rights. As a result, some people have become vulnerable – those considered weak or whose rights take last priority. (The order of priority for land rights are: for sons who get married, thereafter their widows, male children born out of wedlock and lastly unmarried girls.)

When land was plentiful, there was less land rights abuse. Now, land is scarce and, especially in Northern and Eastern Uganda since the days of cattle rustling in the late '80s, it is the only asset left as source of income. As a result, it often happens that the stewards of the land are claiming they are the sole owners of the land, and those who have first priority try to grab land from those who are considered weak or not deserving of land. Widows used to have an 'inheritor' to protect them, but since HIV/AIDS, this practice has become rare. Although widows have first priority rights over land, if they have no inheritor, they are considered weak and their land is likely to be grabbed – usually by their late husband's family, who are supposed to protect them. Children born out of wedlock, unmarried girls and widows are likely to have their land grabbed and to become landless.

Recommendation.

What is needed is a way for preventing the roles of owner (with rights) and being steward (with responsibilities) becoming blurred, so that the rights are used to violate the rights of others less powerful. It is proposed to vest the rights to manage and to own land in one unit, the family unit, in the names of the husbands and wife (or wives) and to support this with issuing of Certificates of Customary Ownership (CCO). For the families managed by widows, the family titles should be in her names and the names of all her children. The inclusion of the children is to allay clan fear that the woman will "*steal the land*".

It is also proposed that clan institutions should be legally recognised for administering land, including hearing land cases. The law should support the customary institutions to enforce their decisions, but should also subject these institutions to state supervision to ensure there is no discrimination and abuse of land rights.